Hearing Date & Time: October 19, 2022 at 2:00 p.m. (prevailing Eastern Time)
Re: Docket No. 289, 524

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,	)	Case No. 22-10943 (MEW)
Debtors.[1]	)	(Jointly Administered)

STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN RESPONSE TO OBJECTION OF THE AD HOC GROUP OF EQUITY HOLDERS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING (I) THE ADEQUACY OF THE DISCLOSURE STATEMENT, (II) SOLICITATION AND NOTICE PROCEDURES, (III) FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH, AND (IV) CERTAIN DATES WITH RESPECT THERETO

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of Voyager Digital Holdings, Inc., *et al.* (collectively, the "Debtors") hereby submits this statement in response (the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Voyager Digital Holdings, Inc.'s and Voyager Digital Ltd.'s principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003. Voyager Digital, LLC's principal place of business is 701 S. Miami Ave, 8th Floor, Miami, FL 33131.

"Statement") to the *Objection of the Ad Hoc Group of Equity Holders to Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates With Respect Thereto* [Docket No. 524] (the "Equity Objection"),[2] and respectfully states as follows:

RESPONSE

1. Although the Committee filed an objection to the broad releases contained in the Debtors' Second Amended Plan,[3] it engaged in around-the-clock negotiations with the Debtors and the Special Committee to resolve these critical issues, and reflected in revised versions of the Plan and Disclosure Statement. More importantly, the Committee remains fully supportive of the FTX Sale Transaction and prompt distributions under the Second Amended Plan. After all, the Debtors' unsecured creditors (principally, the Account Holders) have borne the brunt of financial hardship in connection with these Chapter 11 Cases, with approximately $1.8 billion in cryptocurrency claims frozen since June 2022. And although the Committee is sympathetic with the Debtors' equity holders' loss of investment, the positions asserted by the Ad Hoc Group of Equity Holders (the "Ad Hoc Group") in the Equity Objection or supporting declaration[4] are substantiated in either law or fact.

2. To be sure, certain of these issues may need to be addressed either in connection with confirmation or post-confirmation, and thus are not Disclosure Statement issues. At the same time, in connection with the upcoming Disclosure Statement hearing,

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2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Equity Objection.

3 *See Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Amended Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 526].

4 *See Declaration of Matthew Dundon in Support of the Objection of the Ad Hoc Group of Equity Interest Holders to the Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* (the "Dundon Declaration").

additional context and disclosure at this juncture in the Chapter 11 Cases is critical to the Court, the creditors, and all parties in interest.

3. Although the Debtors' Chapter 11 Cases are undoubtedly complex in many ways, the Second Amended Plan is relatively simple and straightforward. Unsecured creditors receive all of the value from the Debtors' estates after payment of (or reserve for) administrative and priority claims. To the extent that the 3AC Recovery or recoveries from other litigation results in creditors being paid in full, equity holders will receive any incremental recoveries. Indeed, the Committee worked closely with the Debtors to ensure that the Plan would provide for any accretive value after creditors are paid in full to inure to equity holders. That change is now reflected in the Second Amended Plan, and the Committee is certainly hopeful of a result that provides for unsecured claims to be paid in full, with additional amounts flowing to equity.

4. But the Ad Hoc Group seeks more than they are otherwise entitled to receive under the Bankruptcy Code. In doing so, the Ad Hoc Group asserts that hundreds of millions of dollars of value should flow to equity, even *before* creditors are paid in full. The argument, according to the Equity Objection, is that TopCo has few (or no liabilities), and significant assets. The Ad Hoc Group is wrong on both counts. As a result, the Committee files this Statement to clarify the record. Although the Committee reserves the right, if necessary, to brief these issues at the appropriate time, the Committee wishes to correct no fewer than four material misstatements in the Equity Objection.

5. ***First***, the Ad Hoc Group takes the position that the "sole material obligation" of TopCo is the Alameda Loan Facility Claim. Equity Obj. at ¶ 2. At the outset, as described more fully below, the Alameda Loan Facility Claim is **not** the only material obligation of TopCo; rather TopCo equity interests sit behind approximately $1.8 billion in Account Holder Claims. But, setting that issue aside for a moment, at a minimum, the Alameda Loan

Facility Claim—which is a $75 million claim of TopCo—must be satisfied in full prior to any recovery on account of TopCo equity interests. The Ad Hoc Group's assertion that the Plan cancels any recovery on account of the Alameda Loan Facility Claim is a fundamental misreading of the Plan and the Asset Purchase Agreement.

6. Under the Asset Purchase Agreement, the Purchaser (who is an affiliate of Alameda) agreed to "the transfer to [OpCo] all right, title and interest in the Loan Claims." Asset Purchase Agreement at § 2.1(a). The Asset Purchase Agreement does not provide for the cancellation of those claims, nor that those claims would somehow be satisfied. Rather, the intention of the Purchaser was to take any recovery its affiliates would otherwise be entitled to receive on account of the $75 million loan, and contribute that recovery to the Debtors' customers. The Plan now says exactly that. The treatment of Class 4 (Alameda Loan Facility Claims) provides that "Pursuant to the Asset Purchase Agreement . . . all rights, titles, and interests in the Alameda Loan Facility Claims shall be conveyed to OpCo, and OpCo shall be entitled to any recovery on account of the Alameda Loan Facility Claims." To the extent that the treatment of the Alameda Loan Facility Claims was previously unclear on this point, the modified Plan is now consistent with the Asset Purchase Agreement. Thus, the Ad Hoc Group's argument that $75 million of TopCo claims was somehow released under the Plan—therefore paving the way for an enhanced equity recovery—is mistaken.

7. ***Second***, the Ad Hoc Group identifies approximately $217.5 million in intercompany transfers that TopCo holds against OpCo, and rushes to the unsupported conclusion that TopCo Interests are necessarily "in the money." Since its appointment, the Committee has spent significant time analyzing and assessing the Debtors' intercompany transfers. The chart below represents the four intercompany payables owing from OpCo to TopCo.

($ in millions USD)

No.	Lender	Borrower	Documentation	Total Amount
1	TopCo	OpCo	Significantly after transfer	$ 78.9
2	TopCo	OpCo	Significantly after transfer	1.5
Subtotal (I/C Loans w/ Documentation)				***$ 80.4***
3	TopCo	OpCo	None	79.3
4	TopCo	OpCo	None	57.8
Subtotal (I/C Loans w/o Documentation)				***$ 137.1***
Total				**$ 217.5**

Source: ***Debtors' First Amended Disclosure Statement [D.I. 540]***

8. The Committee concurs with the Debtors' assessment that each of these intercompany transfers can be recharacterized as equity.[5] Recharacterization permits a bankruptcy court to treat an investment as an equity infusion when that investment—despite being styled as debt—more closely resembles a contribution to capital in substance. Courts analyzing recharacterization claims balance the factors set forth by the Sixth Circuit in *Basco Corp. v. Masco Tech, Inc. (In re AutoStyle Plastics, Inc.)*, 269 F.3d 726 (6th Cir. 2001).[6] *See In re LATAM Airlines Group, S.A.*, Case No. 20-11254 (JLG), 2022 WL 1295928, at *9 n.23 (Bankr. S.D.N.Y. Apr. 29, 2022).

9. As noted in the above chart, nearly two-thirds of the amounts owing from OpCo to TopCo are *not even documented* in a loan or similar agreement, and therefore have no fixed payment or maturity schedule. *See e.g.*, *In re AutoStyle Plastics, Inc.*, 269 F.3d at

[5] For the first time, the Committee reviewed the Debtors' recharacterization analysis in the recently revised Disclosure Statement. The Committee's review of these issues remains ongoing, and the Committee reserves all rights in connection therewith.

[6] Those factors are: (1) the names given to the certificates evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) identity of interest between creditor and stockholder; (7) the security, if any, for the advances; (8) the corporation's ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advance was used to acquire capital assets; and (11) the presence or absence of a sinking fund to provide repayments. *In re AutoStyle Plastics*, 269 F.3d at 750.

750 ("The absence of notes or other instruments of indebtedness is a ***strong indication*** that the advances were capital contributions and not loans") (emphasis added); *see also In re Lyondell Chem. Co.*, 544 B.R. 75, 94 (Bankr. S.D.N.Y. 2016) ("When an advance occurs without any instruments of indebtedness, such an action points to an equity contribution."). Further, the other two intercompany payables that do have documentation, were documented *many months after the investments were made*, which should "raise doubts in [the] Court's mind as to whether the parties determined what they wanted to call the transaction until well after the actual exchange." *In re Cold Harbor Assocs. L.P.*, 204 B.R. 904 (Bankr. E.D. Va. 1997) (noting concern where "loans" were not documented until well after the transaction was finalized); *see also In re RJC Indus., Inc.*, 369 B.R. 845, 853 (Bankr. M.D. Pa. 2006) (concluding that "the entire $350,000 investment represent[ed] an equity investment" where, among other things, "[w]ritten loan agreements with terms were not drafted until long after the advances were made."). And with respect to the two transfers that are now reflected in loan agreements, those transactions contain substantive terms that are clearly indicative of an equity infusion, including without limitation, (i) no fixed repayment schedule; (ii) amounts payable on demand, even if no default of obligor exists; and (iii) lack of enforcement by lender after no interest paid.

10. Although the Committee recognizes that the parties need not, at this stage, formally brief the recharacterization issues relating to these intercompany payables, needless to say, the Ad Hoc Group's conclusion that these intercompany payables necessarily put TopCo in the money is premature and incorrect.

11. Nor is it appropriate for the Ad Hoc Committee to rely upon the Information Officer's reports in the Canadian proceeding as somehow expressing an opinion or recommendation of the Information Officer. In doing so, both the Equity Objection and the Dundon Declaration rely exclusively on the First and Second Reports of the Information

Officer filed in the associated Canadian proceeding, implying that the Information Officer completed an investigation and provided an opinion. *See* Equity Obj. at ¶ 23; Dundon Dec. at ¶ 10, 16, 21. To the contrary, paragraphs 2.1 of the First Information Officer Report and Second Information Officer Report both clearly state that the information has been provided by the Debtors and its Canadian Counsel, and that the Information Officer has not independently investigated or verified the accuracy of the information. And paragraphs 6.1 and 6.2 of the Second Report clearly state that information regarding the intercompany claims and interests were provided in the Debtors' books and records, and no independent opinion is being provided by the Information Officer at this time. The Ad Hoc Group's wholesale reliance on these reports is therefore misplaced.

12. ***Third***, TopCo is a co-obligor **on approximately $1.8 billion** in Account Holder Claims.[7] This would result in TopCo equity interests being even more hopelessly out of the money. The agreement that governs the relationship between Voyager and the Account Holders is the Customer Agreement (the "Customer Agreement"), which is attached hereto as **Exhibit A**. The preamble of the Customer Agreement states that "this Customer Agreement governs the relationship between Customer and Voyager . . . as it relates to the services provided by Voyager as described" in the Customer Agreement. Accordingly, both Voyager, for its part, and Customer, for its part, "agree[d] to the terms and conditions" set forth in, and thus are bound by, the Customer Agreement.

13. "Voyager" is a defined term in the Customer Agreement, and is defined as not only Voyager Digital, LLC (*i.e.*, OpCo) but also expressly "includes affiliated entities." Thus, any reference to "Voyager" and its obligations in the Customer Agreement necessarily

[7] Fed. R. Bankr. P. 1009 provides, in part, that "A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court." The Committee reserves all rights in connection therewith.

include both OpCo and OpCo's affiliates. Voyager Digital Ltd. Canada (*i.e.*, TopCo) directly owns 100% of the stock in Voyager Digital Holdings, Inc. (*i.e.*, HoldCo), which in turn holds 100% of the membership interests in Voyager Digital, LLC (*i.e.*, OpCo). There is no question that TopCo is an affiliate of OpCo. *See, e.g.*, *Rothstein v. Am. Int'l Grp., Inc.*, 837 F.3d 195, 206 (2d Cir. 2016); *see also In re Ditech Holding Corp.*, Case No. 19-10412 (JLG), 2021 WL 3716398, at *11 (Bankr. S.D.N.Y. Aug. 20, 2021); *In re Lehman Brothers Inc.*, 503 B.R. 778, 783 (Bankr. S.D.N.Y. 2014). Accordingly, OpCo, TopCo, HoldCo, and its other affiliated entities are bound by the Customer Agreement.

14. Paragraph 8 of the Customer Agreement references Cryptocurrency withdrawals. Specifically, "Voyager will effectuate a Withdrawal based upon Customer's written instructions." Customer Agreement at § 8. Because the defined term "Voyager" in the Customer Agreement expressly includes affiliates, TopCo and OpCo are also obligated to provide withdrawals under the Customer Agreement. Failure to provide withdrawals to customers under the Customer Agreement is a breach by all Voyager entities.

15. As a result, equity interests in TopCo sit behind another $1.8 billion in Account Holder Claims. Although it is theoretically possible that equity interests are "in the money," this would require either a substantial recovery on litigation or other claims. The Second Amended Plan already contemplates for this "home run" scenario, providing that any incremental recoveries after payment in full of Account Holder Claims and General Unsecured Claims would flow to TopCo equity.

16. ***Fourth***, although causes of action against the Debtors' officers and directors, as well as proceeds under the Debtors' D&O insurance policies, may provide enhanced recoveries to the Debtors' creditors, it is far from the saving grace for holders of equity interests. There is a drastic difference between the theoretical value of those causes of action, and the ability to collect meaningful sums from the Debtors' directors and officers. Needless

to say, although the Committee's analysis of personal financial statements remains ongoing, the Equity Objection vastly overstates the amount of personal assets available for recovery and, in any event, such amounts—even if they were to be substantial (which they are not)—would not make any material difference when accounting for the $1.8 billion in Account Holder Claims and $75 million in Alameda Loan Facility Claims, both of which sit ahead of equity interests.

CONCLUSION

17. The Committee has worked extensively since its appointment on countless issues facing the Debtors, all toward the end goal of confirming a Plan that provides for fair, timely, efficient, and value-maximizing recoveries before the end of the calendar year. More particularly, over the past month, the Committee has worked nearly round-the-clock on issues relating to the Sale Transaction and Plan issues with the Debtors, FTX and other key stakeholders. All of these efforts are singularly focused on providing recovery to the Debtors' creditors to relieve them of the weighty financial and emotional burdens caused by this bankruptcy. And the Committee has, thus far, been successful in this pursuit, and remains optimistic that the Plan accomplishes these goals. To allow equity holders, with no basis in law or fact, to achieve material recoveries before creditors are paid in full would be a difficult pill to swallow.

Dated: New York, New York
October 19, 2022

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/s/ Darren Azman

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October 2022, I caused a true and correct copy of the foregoing *Statement of the Official Committee of Unsecured Creditors in Response to Objection of the Ad Hoc Group of Equity Holders to Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* to be served on the Service List via (i) electronic notification pursuant to the CM/ECF system for the United States Bankruptcy Court for the Southern District of New York, (ii) e-mail, or (iii) First Class U.S. Mail, as indicated in the service list attached hereto.

/s/ Darren Azman
Darren Azman

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